



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-127391-16]

RIN 1545-BQ34

Modernizing Regulations on Sales of Seized Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to modernize regulations regarding the sale of a taxpayer's property that the IRS seizes by levy. The proposed amendments would allow the IRS to maximize sale proceeds for the benefit of the taxpayer whose property the IRS has seized and the public fisc. The proposed regulations would affect all sales of property the IRS seizes by levy.

DATES: Electronic or written comments and requests for a public hearing must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-127391-16). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish any comments submitted electronically, and on paper, to the public docket. Paper submissions may be sent to: CC:PA:LPD:PR (REG-127391-16), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations,

Micah A. Levy, (202) 317-6832; concerning the submission of comments or requests for a public hearing, Vivian Hayes (202) 317-6901 (not toll-free numbers) or by sending an email to publichearings@irs.gov.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6335 of the Internal Revenue Code (Code) relating to the sale of property that is seized by levy (seized property).

I. Statutory Background

Section 6335 of the Code governs how the IRS sells seized property. It was enacted as part of the Internal Revenue Code of 1954, Public Law 83–591, ch. 736, 68A Stat. 3, 785–86 (1954), though many of its provisions date back to 1866. See Act of July 3, 1866, ch. 184, 14 Stat. 106, 107–110 (1866).

Section 6335(a) requires the Secretary of the Treasury or her delegate (Secretary), as soon as practicable after a seizure, to give written notice of the seizure to the owner of the property that was seized (or, in the case of personal property, to the property's possessor). The notice must specify the sum demanded and contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the seized property. Notice must be given to the owner (or possessor) either in person, by leaving it at the owner's (or possessor's) usual place of abode or business, or, in certain instances, by mail.

Section 6335(b) requires the Secretary, as soon as practicable after a seizure, to give the property's owner written notice of the forthcoming sale. The notice must be provided in the same manner prescribed in section 6335(a) for the notice of seizure. Section 6335(b) also requires that the Secretary publicize the sale to the general public

by publishing notice “in some newspaper published or generally circulated within the county wherein such seizure is made,” or if such a newspaper does not exist, by posting “notice at the post office nearest the place where the seizure is made and in not less than two other public places.” The notice of sale must specify the property to be sold and the time, place, manner, and conditions of the sale.

Section 6335(c) provides that if seized property is not divisible in a way that would allow for a sale of part of the property to fully satisfy the whole amount of the tax and expenses, the Secretary is to sell the whole property.

Section 6335(d) requires that the time of sale be not less than 10 days nor more than 40 days from the time public notice of the sale is provided under section 6335(b). The place of sale must be within the county in which the property is seized except by special order of the Secretary.

Section 6335(e) specifies the manner and conditions of sale. Section 6335(e)(1) provides general rules about determinations relating to the minimum price, a sale being made to the highest bidder at or above the minimum price, the instances in which property will be deemed sold to the United States at the minimum price, and the instances in which the property will be released to the owner. Section 6335(e)(2) further directs the Secretary to prescribe by regulation the following additional rules applicable to the manner and other conditions of sale: requiring the sale not to be conducted in any manner other than by public auction or by public sale under sealed bids; in the case of the seizure of several items of property whether the property is to be offered separately, in groups, or in the aggregate, and sold under whichever method produces the highest aggregate amount; whether the announcement of the minimum price may be delayed until the receipt of the highest bid; whether payment in full is to be required at the time of acceptance of a bid or whether a part of such payment may be deferred for a period not to exceed one month; the extent to which additional methods (including advertising)

may be used in giving notice of a sale; and under what circumstances the Secretary may adjourn a sale from time to time not to exceed in all one month. Congress delegated this authority to allow the IRS “latitude to provide modern rules for selling property in the best manner possible.” H.R. Rep. No. 83-1337, at 410 (1954); S. Rep. No. 83-1622, at 578 (1954). Section 6335(e)(3) specifies what is to occur if a winning bidder fails to pay the bid amount.

Section 6335(f) provides that the owner of seized property may request the Secretary to sell the property within 60 days after such request (or within a longer period as may be specified by the owner). The Secretary must comply with the request unless the Secretary determines (and thereafter notifies the owner within the period) that doing so would not be in the best interests of the United States.

II. Regulatory Background

The current regulations implementing section 6335 are set forth in §301.6335-1. Section 301.6335-1, which dates to 1954, has not been revised except to incorporate minor statutory changes. See T.D. 6119, 20 FR 28 (Jan. 4, 1955) (initial publication); T.D. 7180, 37 FR 7316 (Apr. 13, 1972) (amending §301.6335-1(b) to conform to an amendment to section 6335(b) made by section 104(d) of the Federal Tax Lien Act of 1966, Public Law 89-719, 80 Stat. 1137 (1966), by expanding notice of sale publication to include newspapers that are “generally circulated” within the county); T.D. 8398, 57 FR 7545 (Mar. 3, 1992) (implementing section 6236(g) of Technical and Miscellaneous Revenue Act of 1988, Public Law 100-647, 102 Stat. 3342 (1988), which enacted section 6335(f), by adding §301.6335-1(d) to address the right of the owner of any seized property to request sale within 60 days); T.D. 8691, 61 FR 66217 (Dec. 17, 1996) (revisions to reflect amendment of section 6335(e) concerning the setting of a minimum price for seized property made by section 1570 of the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2764 (1986)); and T.D. 8939, 66 FR 2821 (Jan. 12,

2001) (adding a cross-reference in §301.6335-1(b) to §301.6212-2 regarding the definition of “last known address”). Some provisions of §301.6335-1 are dated, while others do not accommodate technological advances such as the advent of the Internet and electronic payment processing. These proposed amendments would conform the prescribed manner and conditions of sales of seized property with modern practices. In comparison to the existing procedures, the proposed amendments would benefit taxpayers by making the sales process both more efficient and more likely to produce higher sales prices.

Explanation of Provisions

A. Place of Sale

Section 6335(d) of the Internal Revenue Code (Code) requires that the place of sale be “within the county” in which the seizure of the subject property took place, “except by special order of the Secretary.” Section 301.6335-1(c)(1) currently requires that the place of sale be within the county in which the seizure took place unless “substantially higher bids” can be obtained by holding the sale elsewhere, in which case the district director may order that the sale be held in that other place. Section 6335(d) and current §301.6335-1(c)(1) do not expressly contemplate online sales. But online sales can attract a wider range of potential purchasers, and thus potentially higher bids, while conserving IRS resources. Given that section 6342(a) of the Code provides that money realized by the sale of seized property is applied against the expenses of the levy and sale before any remaining amount is made available to satisfy the liability of the taxpayer, taxpayers whose seized property is being sold benefit both when the IRS realizes more money from a sale and when the IRS incurs less expense in conducting the sale.

Proposed §301.6335-1(d)(1) would provide that the sale will be held at the time and place stated in the notice of sale. Proposed §301.6335-1(d)(1) would further

provide that the place of an in-person sale must be within the county in which the property is seized, except the sale may be held in a different county if the IRS determines, by special order, that substantially higher bids may be obtained by holding the sale in that different county. For online sales, proposed §301.6335-1(d)(1) would provide that the place of sale will generally be within the county in which the property is seized such that a special order is not needed. For example, under the IRS's current practice for online sales (which uses the special-order process), bids are solicited from in-county bidders, there is in-county advertising, the property is stored in the county, inspection of the property (when permitted) occurs in the county, and the winning bidder must retrieve the property from within the county. Under the proposed regulations, the place of sale for such online sales would be considered to be within the county in which the property was seized, and no special order would be needed. However, in the unusual situation in which an online sale deviates from current practice, such as if the seized property is moved out of the county for storage and remains out of the county during any allowable period for pre-sale inspection or if the Internet is not generally available within the county, then proposed §301.6335-1(d)(1) would require that such sale may be conducted on the Internet only by special order when doing so would be more efficient or would likely result in more competitive bids.

B. Offering of Property

In the case of the seizure of several items of property, section 6335(e)(2)(B) of the Code allows the IRS to choose how to group the property for sale. In general, the property may be sold as separate items, as groups of items, or in the aggregate. Section 6335(e)(2)(B) of the Code also permits the IRS to offer property both separately (or in groups) and in the aggregate during the same sale, provided that the IRS sells the property "under whichever method produces the highest aggregate amount."

Section 301.6335-1(c)(5) currently restricts the situations in which both real and

personal property may be grouped. This limits the IRS's ability to determine on a case-by-case basis how to group property to produce the highest sale price. Proposed §301.6335-1(d)(5) would provide that the IRS will choose the method of grouping property (or selling items separately) that will likely produce that highest overall sale amount and is most feasible.

C. Terms of Payment

Section 6335(e)(2)(D) of the Code states that regulations are to provide whether payment in full is required at the time of acceptance of the bid, or whether a part of such payment may be deferred for a period, not to exceed one month, as may be determined by the Secretary to be appropriate. In section 301.6335-1, paragraphs (c)(5)(iv) and (c)(7) are proposed to be amended to allow for payment terms that may specifically accommodate the different types of property offerings and methods of sale. For example, in the context of an online sale, the notice of sale may specify the time period in which the winning bidder must submit payment after being notified of the bid's acceptance. Allowing such a period, which is consistent with the IRS's current sales practice, allows time for the winning bidder to be notified of the accepted bid and to remit payment.

Currently, §301.6335-1(c)(5)(iv)(b) provides that if the aggregate price of all property purchased by a successful bidder at a sale is more than \$200, the bidder must make an initial payment of \$200 or 20 percent of the purchase price, whichever is greater. These thresholds are not required by statute. To give the IRS greater flexibility to set the terms for payment, §301.6335-1(c)(5)(iv)(b), which is proposed to be redesignated as §301.6335-1(d)(5)(iv)(B), is proposed to be amended to remove the \$200 or 20 percent requirements, and provide that the public notice of sale, or the instructions referenced in the notice, will specify the amount of the initial payment that must be made when full payment is not required upon acceptance of the bid.

D. Method of Sale

Section 6335(e)(2)(A) of the Code specifies that sales of seized property cannot be conducted in any manner other than by public auction or by public sale under sealed bids. Sections 301.6335-1(c)(6)(i) and (ii) reiterate that rule. Section 301.6335-1(c)(6)(ii) provides procedures applicable to public sales under sealed bids. Some of those procedures apply to public auctions. For example, under current IRS practice, in a public auction sale, the IRS may accept mail-in bids, so long as the form of payment, the amount of the bid, and the location and time for a bid's submission comply with the terms in the public notice of sale. I.R.M. 5.10.4.4.1 (Aug. 29, 2017). Those rules closely align with the procedures for submitting bids for sealed bid sales. Accordingly, in §301.6335-1, paragraphs (c)(6)(i) and (ii) are proposed to be collapsed into one paragraph, proposed (d)(6), and, except where specifically noted, the provisions under §301.6335-1(c)(6)(ii) are proposed to be revised (and redesignated as provisions under §301.6335-1(d)(6)) as follows to apply to all sales under section 6335 of the Code.

1. Form for Use by Bidders

Section 301.6335-1(c)(6)(ii)(b) currently requires that bidders use the form provided by the IRS upon the bidder's request. The provision, which is proposed to be redesignated §301.6335-1(d)(6)(ii), is proposed to be amended to provide that the bidder should use the form or submission method specified in the notice of sale or in instructions referenced by the notice. For example, the notice of sale may direct bidders to a specific website for the form or method of bid submission.

2. Remittance and Payment Methods

In section 301.6335-1, paragraphs (c)(6)(ii)(c) and (c)(7) currently specify how bid remittances and payments of bid prices are to be made. Those sections require that remittances and payments be made by check or money order. This requirement precludes other commercially acceptable payment options—such as electronic

payments, credit or debit card payments, or any other commercially acceptable means authorized by the IRS—even though section 6335 of the Code does not limit the methods by which bidders can make remittances or pay the bid price. Section 301.6335-1(c)(6)(ii)(c), which is proposed to be redesignated §301.6335-1(d)(6)(iii), and §301.6335-1(c)(7), which is proposed to be redesignated §301.6335-1(d)(7), are thus proposed to be amended to provide that remittances and payments are to be made in the manner specified in the notice of sale or in instructions referenced by the notice. For example, the public notice of sale or its instructions could specify that all remittances or payments for a particular sale must be made by check, credit or debit card, or a particular form of electronic payment.

3. Amount of Remittance with Bid

Section 301.6335-1(c)(6)(ii)(c) currently specifies the amount of money a bidder must remit with a sealed bid. Under that section, if the total bid is \$200 or less, then the bidder must remit the full amount and, if the total bid is more than \$200, then the bidder must remit the greater of \$200 or 20 percent of the bid.

Section 6335 of the Code does not specify any amount that must be remitted with a bid except where full payment is required. Additionally, as previously stated, the amounts currently required by §301.6335-1(c)(6)(ii)(c) have never been updated. To give the IRS flexibility to set the terms for bidding, §301.6335-1(c)(6)(ii)(c), which is proposed to be redesignated §301.6335-1(d)(6)(iii), is proposed to be amended by removing the specific \$200 threshold. This provision is proposed to provide that the public notice of sale, or instructions referenced in the notice, will specify the amount, if any, required as a remittance with a bid.

4. Method of Submitting and Withdrawing Bids

Section 301.6335-1(c)(6)(ii)(d) specifies the manner for submitting sealed bids. The provision requires that sealed bids be submitted in a sealed envelope. That

requirement precludes electronic submission of sealed bids. The provision also does not address how bidders in a public auction should submit bids. The provision, which is proposed to be redesignated §301.6335-1(d)(6)(iv), is proposed to provide that bids for a particular sale—whether public auction or public sale under sealed bids and whether online or not—be submitted in the manner prescribed by the IRS in the notice of sale or in instructions referenced by the notice.

Section 301.6335-1(c)(6)(ii)(f) specifies that sealed bids may be withdrawn in writing or by telegraphic request before the time fixed for the opening of bids. To permit electronic bid withdrawals, the provision, which is proposed to be redesignated §301.6335-1(d)(6)(vi), is proposed to be amended to provide that bid withdrawals may be made in any manner that is specified in the notice of sale or in instructions referenced by the notice.

5. Consideration of Bids

Section 301.6335-1(c)(6)(ii)(e) currently provides that if, at a public sale under sealed bids, there is a tie amongst bids for the highest amount the IRS will determine the successful bidder by drawing lots. The provision, which is proposed to be redesignated §301.6335-1(d)(6)(v), is proposed to be amended to provide that the IRS will reopen the bidding until a highest bid is submitted without any ties. This change is consistent with the IRS's current practice.

E. Personnel Involved in Sale

Section 3443 of the Internal Revenue Service Restructuring and Reform Act (Act), Public Law No. 105-206, 112 Stat. 685, 762 (1998), requires the IRS to “implement a uniform asset disposal mechanism for sales under section 6335” that “should be designed to remove any participation in such sales by revenue officers.” Section 3443 of the Act does not apply to sales of perishable goods under section 6336 of the Code.

To implement section 3443 of the Act, the IRS created the position of Property Appraisal and Liquidation Specialist (PALS). A PALS conducts sales of property seized under section 6335 of the Code. In doing so, they often receive assistance from other IRS employees in performing certain ministerial activities, such as delivering notices of sale and logging the receipt of sealed bids. Revenue officers have long been called on to assist an assigned PALS with those ministerial activities.

In enacting section 3443 of the Act, Congress sought to address a lack of uniformity and fairness in the sales process, such as that caused by potential bias of the revenue officer who seized the property to be sold. In the Conference Report to the Restructuring and Reform Act, the conferees recognized that tax sales were “often conducted by the revenue officer charged with collecting the tax liability.” H.R. Rep. No. 105-559, at 284 (1998). Additionally, the Senate Report accompanying the Restructuring and Reform Act stated that the Finance Committee “believes that it is important for fairness and the appearance of propriety that the revenue officers charged with collecting unpaid tax liability are not personally involved with the sale of seized property.” S. Rep. No. 105-174, at 85 (1998). Those statements reflect the concern that the revenue officer who seized the property does not participate in the property’s sale.

New proposed §301.6335-1(d)(11) would address that concern by precluding any revenue officer who participated in the seizure of the property to be sold from participating in the sale. This proposed amendment is intended to provide clarity to the IRS in making decisions about which employees will be assigned to conduct sales or perform related ministerial duties and that the restriction on participation in sales does not apply to sales of perishable goods conducted under section 6336 of the Code.

F. Other Changes

This proposed regulation would also make non-substantive updates throughout

§301.6335-1. First, current §301.6335-1(a) is proposed to be redesignated and divided into two paragraphs, §301.6335-1(b)(1) and (2). Second, current §301.6335-1(a) and (b)(1) use the term “internal revenue district.” The usage matches that in sections 6335(a) and (b) of the Code. But changes to the IRS’s organizational structure following the Internal Revenue Service Restructuring and Reform Act eliminated “internal revenue districts.” See section 1001(a), 112 Stat. at 689; *Grunsted v. Commissioner*, 136 T.C. 455, 461 (2011). The current analogous successor to an internal revenue district is a field collection territory. See I.R.M. 1.1.16.3.1.1.1 (June 1, 2016); I.R.M. 5.10.3.9 (May 23, 2016); I.R.M. 5.10.4.9 (Aug. 29, 2017). Proposed §301.6335-1(b)(1) would thus provide that the term “internal revenue district” includes a field collection territory or other successor IRS subdivision or office. Third, where the current regulation refers to various job titles within the IRS, some of which no longer exist, the references have been replaced with more general references to territories or to the IRS or to its employees. Fourth, where the current regulation, in §301.6335-1(a) and (b), refers to giving a notice of seizure or sale to an individual (in their role as owner or possessor), the references are proposed to be replaced with references to the owner or possessor because an entity could also be an owner or possessor. Fifth, this proposed regulation would also eliminate §301.6335-1(c)(3)(iii) and (c)(4)(iv), which deal with effective dates of the current regulation for sales made after December 17, 1996. Since all sales going forward will occur after that date, those provisions are no longer necessary. Sixth, some four-level headings in the current regulation have differing capitalization in their numbering. Compare §301.6335-1(c)(3)(ii)(a) and (d)(2)(ii)(A). This proposed regulation would align the capitalization of those headings by, for example, redesignating §301.6335-1(c)(3)(ii)(a) as §301.6335-1(d)(3)(ii)(A) and §301.6335-1(c)(5)(ii)(a) as §301.6335-1(d)(5)(ii)(A). And seventh, cross-references to entries that are proposed to be redesignated would be revised to match the

redesignations.

Proposed Applicability Date

The proposed rules are proposed to apply to sales of property seized on or after the date of publication of the Treasury decision adopting the proposed rules as final regulations in the **Federal Register**.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6(b) of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that the proposed regulations solely conform the prescribed manner and conditions of sales of seized property with modern practices. In comparison to the existing procedures, the proposed regulations benefit taxpayers by making the sales process both more efficient and more likely to produce higher sales prices.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel of the Office of Advocacy of the Small Business Administration for comment on its impact on small businesses.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in

any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the Treasury Department and the IRS as prescribed in the preamble under the “**ADDRESSES**” section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic and paper comments submitted will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the *Federal Register*. Announcement 2023-16, 2023-20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of this regulation is Micah A. Levy, Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and Treasury Department participated in the development of this regulation.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 301 as follows:

Part 301—PROCEDURE AND ADMINISTRATION

1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

2. Amend § 301.6335-1 by:

- a. Redesignating paragraphs (a) through (d) as paragraphs (b) through (e), respectively.
- b. Adding a new paragraph (a);
- c. Revising newly designated paragraphs (b) and (c)(1) and (2);
- d. Adding a subject heading to newly redesignated paragraph (c)(3);
- e. Revising newly redesignated paragraphs (d)(1) and (2) and (d)(3)(i) and (ii);
- f. Removing newly redesignated paragraph (d)(3)(iii);
- g. Revising newly redesignated paragraph (d)(4)(iii);
- h. Removing newly redesignated paragraph (d)(4)(iv);
- i. Revising newly redesignated paragraphs (d)(5)(i), (ii), and (iv), (d)(6), (7), and (9);
- j. Adding paragraph (d)(11);

k. Revising newly redesignated paragraphs (e)(1) and (3); and

l. Adding paragraph (f).

The revisions and addition read as follows:

§301.6335-1 Sale of seized property.

(a) *In general.* Section 6335 of the Internal Revenue Code (Code) and this section provide the rules under which the Internal Revenue Service (IRS) conducts sales of property seized by levy.

(b) *Notice of seizure—(1) Issuance and delivery.* As soon as practicable after seizure of property, the IRS must give written notice to the property's owner (or, in the case of personal property, to the property's possessor). The written notice must be delivered to the owner (or to the possessor, in the case of personal property) or left at the owner's usual place of abode or business if there is such within the internal revenue district in which the seizure is made. If the owner cannot be readily located or has no dwelling or place of business within such district, the notice may be mailed to the owner's last known address. For purposes of this section, the term *internal revenue district* means an internal revenue district within the meaning of section 7621 of the Code and includes an IRS field collection territory or other successor IRS subdivision or office.

(2) *Contents.* The notice of seizure must specify the sum demanded and contain, in the case of personal property, a list sufficient to identify the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(c) * * *

(1) *In general.* As soon as practicable after seizure of the property, the IRS must give notice of sale in writing to the owner. Such notice will be delivered to the owner or left at the owner's usual place of abode or business if located within the internal revenue

district in which the seizure is made. If the owner cannot be readily located or has no dwelling or place of business within such district, the notice may be mailed to the owner's last known address. For further guidance regarding the definition of last known address, see §301.6212-2. The notice must specify the property to be sold, and the time, place, manner, and conditions of the sale thereof, and must expressly state that only the right, title, and interest of the delinquent taxpayer in and to such property is to be offered for sale. The notice will also be published in some newspaper published in the county wherein the seizure is made or in a newspaper generally circulated in that county. For example, if a newspaper of general circulation in a county but not published in that county will reach more potential bidders for the property to be sold than a newspaper published within the county, or if there is a newspaper of general circulation within the county but no newspaper published within the county, the IRS may publish the notice of sale in the newspaper of general circulation within the county. If there is no newspaper published or generally circulated in the county, the notice will be posted at the post office nearest the place where the seizure is made, to the extent authorized under law, and in not less than two other public places.

(2) *Alternative methods.* The IRS may use other methods of giving notice of sale and of advertising seized property, in addition to those referred to in paragraph (c)(1) of this section, if the IRS believes that the nature of the seized property to be sold is such that a wider or more specialized advertising coverage will enhance the possibility of obtaining a higher price for the seized property.

(3) *Exception.* * * *

(d) * * *

(1) *Time and place of sale.* The sale will be held at the time and place stated in the notice of sale. The time of sale will not be less than ten days nor more than 40 days from the time of giving public notice under section 6335(b) of the Code and paragraph

(c) of this section. The place of an in-person sale will be within the county in which the property is seized, except such sale may be held at a place outside that county if the IRS determines, by special order of a delegated official, that substantially higher bids may be obtained for the property by holding the sale in such other county. The place of an online sale will generally be the county in which the property is seized. If, based on the facts and circumstances, the IRS determines that the place of an online sale is not within the county in which the property is seized, the sale may be conducted online by special order when doing so would be more efficient or would likely result in more competitive bids.

(2) *Adjournment of sale.* When it appears that an adjournment of the sale will best serve the interest of the United States or that of the taxpayer, the IRS may adjourn the sale from time to time, but the date of the sale will not be later than one month after the date fixed in the original notice of sale.

(3) * * *

(i) *Minimum price.* Before the sale of property seized by levy, the IRS will determine a minimum price, taking into account the expenses of levy and sale, for which the property must be sold. The IRS will either announce the minimum price before the sale begins or defer announcement of the minimum price until after the receipt of the highest bid, in which case, if the highest bid is greater than the minimum price, no announcement of the minimum price will be made.

(ii) *Purchase by the United States.* Before the sale of seized property, the IRS will determine whether the purchase of the property by the United States at the minimum price would be in the best interest of the United States. In determining whether the purchase of the property would be in the best interest of the United States, the IRS may consider all relevant facts and circumstances including, for example—

(A) Marketability of property;

- (B) Cost of maintaining the property;
- (C) Cost of repairing or restoring the property;
- (D) Cost of transporting the property;
- (E) Cost of safeguarding the property;
- (F) Cost of potential toxic waste cleanup; and
- (G) Other factors pertinent to the type of property.

* * * * *

(4) * * *

(iii) *Release to owner.* If the property is not declared to be sold under paragraph (d)(4)(i) or (ii) of this section, the property will be released to the owner of the property and the expense of the levy and sale will be added to the amount of tax for the collection of which the United States made the levy. Any property released under this paragraph (d)(4)(iii) will remain subject to any lien imposed by subchapter C of chapter 64 of subtitle F of the Code.

(5) * * *

(i) *Sale of indivisible property.* If any property levied upon is not divisible, so as to enable the IRS by sale of a part thereof to raise the whole amount of the tax and expenses of levy and sale, the whole of such property will be sold. For application of surplus proceeds of sale, see section 6342(b) of the Code.

(ii) *Separately, in groups, or in the aggregate.* The IRS, in selecting how seized property will be offered for sale, will consider which method is likely to produce the highest total sales price as well as which method is most feasible. The seized property may be offered for sale—

- (A) As separate items,
- (B) As groups of items,
- (C) In the aggregate, or

(D) Both as separate items (or in groups) and in the aggregate, in which case, the property will be sold under the method that produces the highest aggregate amount.

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(iv) *Terms of payment.* The property will be offered for sale in accordance with whichever of the following terms is fixed by the IRS in the public notice of sale:

(A) Payment in full upon acceptance of the highest bid, or

(B) An initial payment upon acceptance of the highest bid if the payment is in the amount (either the dollar amount or the percentage of the purchase price) specified in the notice of sale and followed by payment of the balance (including all costs incurred for the protection or preservation of the property subsequent to the sale and prior to final payment) within a specified period, not to exceed one month from the date of the sale.

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(6) *Method of sale and sale procedures.* The IRS will sell the property either at a public auction (at which open competitive bids will be received) or at a public sale under sealed bids.

(i) *Invitation to bidders.* Bids will be solicited through a public notice of sale.

(ii) *Form for use by bidders.* A bid must be submitted in the manner specified by the IRS in the notice of sale or in instructions referenced by that notice.

(iii) *Remittance with bid.* The notice of sale, or instructions referenced in the notice, will specify the initial payment amount, acceptable forms of the remittance (such as check, credit or debit card, electronic payment, or other means), and the address (physical or online) at which the bid and remittance must be submitted.

(iv) *Time for receiving bids.* A bid will not be considered unless it is received in the manner and before the time specified in the notice of sale, instructions referenced in the notice, or in the announcement of the adjournment of the sale.

(v) *Consideration of bids.* The public notice of sale will specify whether the

property is to be sold separately, by groups, or in the aggregate, or by a combination of these methods, as provided in paragraph (d)(5)(ii) of this section. If the notice, or instructions referenced in the notice, specifies an alternative method, bidders may submit bids under one or more of the alternatives. In case of error in computing the total price of a group of property in any bid, the unit price of each piece of property will control. The IRS has the right to waive any technical defects in a bid. A technical defect in a bid is deemed waived if the IRS treats it as the winning bid. In the event two or more highest bids are equal in amount, the IRS will reopen the bidding until a high bid is submitted without any ties. After the opening, examination, and consideration of all bids, the IRS will announce the amount of the highest bid or bids and the name of the successful bidder or bidders. Any remittance submitted in connection with an unsuccessful bid will be returned at the conclusion of the sale.

(vi) *Withdrawal of bids.* A bid may be withdrawn only in the manner specified in the notice of sale or in instructions referenced in the notice. A technical defect in a bid confers no right on the bidder for the withdrawal of the bid after it has been opened or accepted.

(7) *Payment of bid price.* All payments for property sold under this section must be made in the form and manner (whether by check, credit or debit card, electronic payment, or other means) specified by the IRS in the public notice of sale or in instructions referenced in the notice. If payment in full is required upon acceptance of the highest bid, the payment must be made at the time and in accordance with the terms specified in the notice of sale. If deferred payment is permitted, the initial payment must be made upon acceptance of the bid at the time and in accordance with the terms specified in the notice of sale, and the balance must be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful bid will be applied toward the purchase price.

* * * * *

(9) *Default in payment.* If payment in full is required upon acceptance of the bid and is not paid when due, the IRS will proceed again to sell the property in the manner provided in section 6335(e) of the Code and this section. If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate of six percent per annum from the date of the sale; or, in the discretion of the IRS, the sale may be declared null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in subsections (b), (c), and (e) of section 6335 of the Code and this section. In the event of such readvertisement and sale, any new purchaser will receive such property or rights to property free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser will be forfeited to the United States.

* * * * *

(11) *Participation in sale by revenue officers.* No revenue officer who seized the property to be sold at a sale conducted under section 6335 of the Code and this section may participate in the sale of that seized property. This restriction does not apply to sales of perishable goods conducted under section 6336 of the Code.

(e) * * *

(1) *In general.* The owner of any property seized by levy may request that the IRS sell such property within 60 days after such request, or within any longer period specified by the owner. The IRS must comply with such a request unless it determines that compliance with the request is not in its best interests. If the IRS decides not to comply with the request, it must notify the owner of the determination within the 60-day

period, or any longer period specified by the owner.

* * * * *

(3) *Notification to owner.* The IRS will respond in writing to a request for sale of seized property as soon as practicable after receipt of such request and in no event later than 60 days after receipt of the request, or, if later, the date specified by the owner for the sale.

(f) *Applicability date.* The rules of this section apply to sales of property seized on or after [DATE OF PUBLICATION OF FINAL RULE].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

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